

MINUTES

ALCOHOL AND TOBACCO COMMISSION

OCTOBER 7, 2003

CALL TO ORDER/NOTING OF QUORUM

Chairman Herriman called the meeting to order and noted the quorum and the attendance. Present were Commissioner Davis and Commissioner Marks. Also in attendance were Industry Liaison Okey, Executive Secretary Webb and Superintendent Davis.

Jim Calvert of Olinger, Jeff McKean and Lisa Goldner of Bose McKinney and Evans were present as observers.

DISPOSITION OF MINUTES

Commissioner Marks moved to approve the minutes that were submitted for the September 16, 2003 meeting. Motion seconded by Commissioner Davis and it was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

Commissioner Davis moved to approve the PAD forms that were submitted for the October 7, 2003 meeting, which also includes the previous meeting. Motion seconded by Commissioner Marks and it was unanimously approved.

DL49-14283 21ST AMENDMENT, INC. AND DL49-14437 21ST AMENDMENT, INC.
–Hearing Judge Webb stated these cases were concerning violations of selling to a minor and allowing a minor to loiter. He is submitting his Findings of Fact and Conclusions of Law for the Commission's consideration.

Chairman Herriman stated the findings reflect that the permittee must take all reasonable precautions in supervising its employees, but the Chairman did not find evidence in the findings to support that. He also stated that he would like to see more evidence presented by the permittee to support the supervisory aspect of the business. The Chairman also would like the Hearing Judge to look at the law as to whether that is an absolute defense or just a partial defense.

Commissioner Davis moved to remand this to the Hearing Judge for a rehearing. Motion seconded by Commissioner Marks and it was unanimously approved.

CONSIDERATION OF APPLICATIONS

I incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by said staff with the authority of the Commission, and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Davis and it was unanimously approved.

I incorporate by reference these lists of permit applications for a new permit or application for changes in location or ownership or both of existing permits, which have been recommended by local boards and reviewed by at least two Commissioners and hereby move for approval of same and inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Davis and it was unanimously approved.

I incorporate by reference these lists of permit applications for catering and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Davis and it was unanimously approved.

I incorporate by reference these lists of permits to be placed in escrow for not more than one year, which have been reviewed and recommended by a Commissioner as appropriate for first or second year escrow and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Davis and it was unanimously approved.

Three hundred ninety (390) renewals approved, forty-seven (47) new and/or transfer permits approved, twelve (12) permits conditionally approved, twenty-two (22) permits approved for catering, three (3) permits approved for first year escrow, three (3) permits approved for second year escrow, two (2) permits approved for third year escrow and one (1) permit approved for fourth year escrow.

RENEWAL LETTERS AND WAIVER OF FEES

Commissioner Marks moved to approve the renewal letters and the waiver of fees for letters of extension for the preceding weeks. Motion seconded by Commissioner Davis and it was unanimously approved.

APPLICATIONS FOR DISCUSSION

RR84-03151 CROWN DEVELOPMENT, LLC – Commissioner Marks noted this is a type 210 transfer of location and ownership and a new Sunday sales permit application with the local board voting four (4) to zero (0) to approve. There were remonstrators present at the hearing.

Commissioner Marks moved to uphold the local board's recommendation to approve the transfers and new permit. Motion seconded by Commissioner Davis and it was unanimously approved.

RR49-00279 BNY INDIANAPOLIS, INC. – Commissioner Marks noted this is a type 210 renewal application with the local board voting four (4) to zero (0) to disapprove.

Commissioner Marks moved to uphold the local board's recommendation to deny the renewal. Motion seconded by Commissioner Davis and it was unanimously approved.

Attorney Murray Clark, who represents the buyer, appeared to let the Commission know that the permittee has a buyer for this permit and with the Commission's permission will file the transfer paperwork soon. He expected the purchase agreement to be completed within a week.

Attorney Jeff Abrams, who represents the permittee, requested the Commission remand the renewal to the local board at the same time the transfer is before the local board.

RR79-84213 JCJ, LLC – Commissioner Marks noted this is a type 210 transfer of location and new Sunday sales application with the local board voting three (3) to zero (0) to disapprove.

Chairman Herriman stated he felt the local board record was unclear as to whether or not this was a recommendation for denial or if this could be reconsidered in a couple of weeks, which would not be possible. Also, it appeared that the local board was trying to require the permittee to not open until 11:00 a.m., instead of the legal hours of 7:00 a.m.

Commissioner Marks moved to remand this application to the local board for clarification and reinvestigation. Motion seconded by Commissioner Davis and it was unanimously approved.

RR34-03931 DAN THE MAN, LLC – Commissioner Marks noted this is a type 210 renewal application with the local board voting three (3) to zero (0) to approve. There were remonstrators present at the hearing.

Commissioner Marks moved to uphold the local board's recommendation to approve the renewal. Motion seconded by Commissioner Davis and it was unanimously approved.

RR33-20610 MERCHANT MANAGEMENT GROUP, LLC – Commissioner Marks noted this is a new type 210 application with the local board voting four (4) to zero (0) to disapprove. There was a problem with the audio tope recording; therefore, no tape was made of the hearing.

Commissioner Marks moved to remand this application to the local because there is no record of the local board hearing. Motion seconded by Commissioner Davis and it was unanimously approved.

DL43-20614 SPEEDWAY SUPERAMERICA, LLC – Commissioner Marks noted this is a new type 115 application with the local board voting three (3) to one (1) to disapprove.

There were no remonstrators present. The local board members cited character of business, no need for services and scope of permit as reasons for denial.

Commissioner Marks moved to uphold the local board's recommendation to deny the new permit. Motion seconded by Commissioner Davis and it was unanimously approved.

RR02-18581 Y-NOT, LLC – Commissioner Marks stated the location of this permit was annexed into the city limits of Fort Wayne. The permittee is requesting that this permit be converted from a type 209 permit to a type 210 permit.

Commissioner Marks moved to approve this request. Motion seconded by Commissioner Davis and it was unanimously approved.

RR02-04531 M & B MANAGEMENT, INC. - Commissioner Marks stated the location of this permit was annexed into the city limits of Fort Wayne. The permittee is requesting that this permit be converted from a type 209 permit to a type 210 permit.

Commissioner Marks moved to approve this request. Motion seconded by Commissioner Davis and it was unanimously approved.

RR27-04143 BOOMERS I, INC. – Chairman Herriman noted this is a type 210 renewal application with the local board voting two (2) to two (2). The Commission reviewed the file and the tapes of the local board hearing.

Commissioner Marks moved to deny this renewal application. Motion seconded by Commissioner Davis and it was unanimously approved.

INACTIVE FILES

Commissioner Marks moved to make twenty-one (21) permits inactive. Sixteen (16) permits are not subject to auction and five (5) permits are subject to auction. Motion seconded by Commissioner Davis and it was unanimously approved.

APPEALS FROM LOCAL BOARD RECOMMENDATIONS

DL02-20523 SPEEDWAY SUPERAMERICA, LLC – Appeal filed.

OLD BUSINESS

No Old Business

NEW BUSINESS

HEALTHNET FOUNDATION GRAND BAZAAR – HealthNet Foundation would like to serve donated alcoholic beverages at their Grand Bazaar.

RED GERANIUM ENTERPRISES BEER FESTIVAL AND HOG ROAST – Red Geranium Enterprises would like to serve donated alcoholic beverages at their Beer Festival and Hog Roast.

EXCHANGE CLUB WINE TASTING – Exchange Clubs of Porter County would like to use donated alcoholic beverages at their wine tasting.

GLEANERS FOOD BANK FUND RAISING GALA – Gleaners Food Bank would like to serve donated alcoholic beverages at their fund raising gala.

CHRISTAMORE HOUSE GUILD TREE SPREE – Christamore House Guild would like to serve donated alcoholic beverages at their annual Tree Spree.

KIWANIS CLUB OF MERIDIAN HILL CHILDREN'S BUREAU WINE TASTING – Kiwanis Club would like to use donated alcoholic beverages at their wine tasting.

DAMIEN CENTER GRANDE MASQUERADE – The Damien Center would like to serve donated alcoholic beverages at their Grande Masquerade.

INDIANA STATE HISPANIC CHAMBER OF COMMERCE GALA – Indiana State Hispanic Chamber of Commerce would like to serve donated alcoholic beverages at their 2nd Annual Gala.

QUAD TOWN SAFETY VILLAGE WINE TASTING – Quad Town Safety Village would like to use donated alcoholic beverages at their wine tasting.

ST. JOSEPH'S CATHOLIC CHURCH FUNDRAISER – St. Joseph's Catholic Church would like to serve donated alcoholic beverages at their fundraiser.

GREATER GREENWOOD CHAMBER OF COMMERCE – Greater Greenwood Chamber of Commerce would like to use donated alcoholic beverages in their silent auction.

Commissioner Davis moved to approve these requests. Motion seconded by Commissioner Marks and it was unanimously approved.

POLICY DETERMINATIONS

TOBACCO CERTIFICATE RULE – Executive Secretary Webb stated the Commission is going to submit a Notice of Intent to Adopt a Rule concerning the placement of the tobacco certificate at the establishment where tobacco products are sold.

UNDER ADVISEMENT

LSA DOC #03-94 AND LSA DOC #03-97 – Executive Secretary Webb stated these proposed rules are still being looked at and are not ready to be voted on by the Commission.

ANNOUNCEMENTS

TOBACCO CERTIFICATE ENFORCEMENT – Superintendent Davis stated that Public Law 250 states that a tobacco certificate is required for those establishments that sell tobacco products. This became effective July 1, 2003. The State Excise Police have given those establishments a window from July 1, 2003 to October 1, 2003, to come into compliance by purchasing the certificate. The Commission mailed out flyers notifying the retailers and wholesalers of this. The Superintendent also stated that it is a class A infraction to not have the tobacco certificate.

Superintendent Davis noted that the Attorney General's Office has prepared a list of cigarettes that can be sold in Indiana. If a brand is not included on that list, the cigarettes are considered contraband and are illegal to sell. This list is posted on the Attorney General's website.

ADJOURNMENT

Commissioner Davis moved to adjourn the meeting. Motion seconded by Commissioner Marks and it was unanimously approved.

Approved this _____ day of _____, 2003.

BART HERRIMAN, CHAIRMAN

BARBARA L. GLASS, VICE CHAIRPERSON

JAMES DAVIS, COMMISSIONER

GIGI M. MARKS, COMMISSIONER